

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**ASSOCIATED ELECTRIC COOPER-
ATIVE, INC., et al.,*Petitioners,*

v.

U.S. ENVIRONMENTAL PROTEC-
TION AGENCY, et al.,*Respondents.*

No.: 23-1195

Consolidated with lead case No. 23-1157

NONBINDING STATEMENT OF ISSUES TO BE RAISED

Petitioners submit the following nonbinding statement of issues to be raised with regard to their petition for review of the U.S. Environmental Protection Agency's (EPA) final rule entitled "Federal 'Good Neighbor Plan' for the 2015 Ozone National Ambient Air Quality Standards," 88 Fed. Reg. 36,654 (June 5, 2023) (Plan):

1. Whether the Plan is arbitrary and capricious or otherwise unlawful because it results in impermissible "over-control" of electric generating units in violation of the Good Neighbor provision of the Clean Air Act.

2. Whether EPA acted in an arbitrary and capricious or otherwise unlawful way when it failed to evaluate questions that are fundamental to the viability of the Plan, including:

a. Failing to analyze the “enhancement” provisions of the Plan applicable to the allowance trading program for electric generating units;

b. Failing to analyze the effect of the “enhancement” provisions—specifically those provisions that reduce the number of available allowances—on electric reliability and the viability of the allowance market; and

c. Incorrectly analyzing cement kilns, including assuming that cement kilns lacked any emission controls.

3. Whether the fact that seven other Courts of Appeals have called into question the lawfulness of EPA’s disapproval of more than half of the states in the Plan, which is the legal prerequisite for the Plan under the Clean Air Act, renders EPA’s foundation and analysis for the Plan arbitrary, capricious, or otherwise unlawful.

Date: August 28, 2023

Respectfully submitted,

/s/ Allison D. Wood

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2023, I filed the foregoing response with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

/s/ Allison D. Wood

Allison D. Wood